

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

WORDTECH SYSTEMS, INC.,  
a California corporation

No. 2:04-cv-01971-MCE-EFB

Plaintiff,

v.

ORDER

INTEGRATED NETWORK SOLUTIONS,  
INC., dba INTEGRATED NETWORK  
SOLUTIONS, CORP. aka  
INTEGRATED NETWORK SOLUTIONS  
aka INTEGRATED SYSTEMS aka  
INTEGRATED NETWORK STORAGE  
COMPANY aka INSC; et al.,

Defendants.

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The Court is in receipt of a communication from Defendants' appellate counsel asking that this Court accept the return of the parties' trial exhibits for retention during the pendency of Defendants' appeal. For the following reasons, the parties are ordered to maintain possession of those exhibits.

First, pursuant to Federal Rule of Appellate Procedure 10(a), the record on appeal consists of, *inter alia*, "the original papers and exhibits filed in the district court."

1 Consistent with Eastern District Local Rule 39-138(3), none of  
2 the exhibits returned to the parties were "filed" in the district  
3 court. Rule 39-138(3) states, "Exhibits offered or admitted at  
4 trial will not be scanned or received electronically unless  
5 ordered by the Court." No Court order being had, those exhibits  
6 were not filed. Accordingly, they are not part of the record  
7 maintained by the Clerk of this Court.

8 Additionally, the parties stipulated to and the Court  
9 ordered that the above exhibits be returned to the respective  
10 parties. Indeed, the parties stipulated on the record to the  
11 return of the trial exhibits. Reporter's Transcript of Jury  
12 Trial, 17:25-18:15 (November 17, 2008). Furthermore, Defendants'  
13 trial counsel authorized the Court in writing (Docket No. 323) to  
14 release the defense exhibits to Defendants' appellate counsel,  
15 and appellate counsel accepted those exhibits, signing a receipt  
16 (Docket No. 324) acknowledging the same.

17 Finally, consistent with the practices of the Federal  
18 Circuit, if that court determines the original record is required,  
19 it will issue its own order requiring transmission. At that time,  
20 the parties, who maintain actual possession of their own trial  
21 exhibits, may submit those exhibits to the circuit court.

22 Accordingly, no exhibits are to be returned to this Court.

23 \_\_\_\_\_IT IS SO ORDERED.

24 Dated: September 17, 2009

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27 MORRISON C. ENGLAND, JR.  
28 UNITED STATES DISTRICT JUDGE